

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0056/P3dn  
RNK:wlj:jm

April 9, 2013

This version of the draft remains in preliminary form. Please note the following:

1. The instructions for this draft included a request to provide that the newly created off-highway vehicle council approve the type of “spill kit” that an OHV must contain. Under current statutes, a council gives advice to a department head. It does not have any other powers, including rule-making power. Consequently, I did not include this requirement in the draft. Do you want DNR to promulgate a rule specifying the requirements of a spill kit?
2. The instructions also included a request for a provision about noise levels. This provision is already in the draft. See s. 23.37 (6), as created in the draft.
3. Please note that I added a provision that clarifies that DNR may acquire land for OHV trails or develop and maintain OHV trails and related facilities. See s. 23.37 (8m), as created in the draft.
4. The draft allows towns, villages, cities, or counties to designate corridors for use as OHV trails. Unlike current law as it applies to ATVs and UTVs, this draft does not provide state aids to these local governments for the development of these trails or for local law enforcement. Is this consistent with your intent?
5. You indicated that you wanted the draft to provide a \$400,000 grant. Please let me know who would be eligible for the grant, for what purpose the grant must be used, and the source of funding for the grant.
6. The draft does not include any language that would allow a Class B OHV to cross a roadway for limited purposes as under current law as it applies to ATVs and UTVs. See s. 23.33 (4) (d). If you want a Class B OHV to be able to cross a roadway, additional drafting will be required in the next version of this draft.
7. As instructed, this version of the draft restructures the appropriations to DNR to ensure that any fees imposed for the registration of OHVs are not deposited into the conservation fund. The draft, instead, appropriates to DNR from the general fund an amount equal to the amount that DNR receives from registration fees. The registration fees under the draft are deposited into the transportation fund. These changes are to ensure that if Assembly Joint Resolution 2 is ratified, the provisions of this draft will not violate the proposed constitutional amendment created in AJR 2. Please note that in this draft the fees that DNR collects for safety course instruction

and the penalty surcharge created in the draft are deposited into the conservation fund because they are not registration fees and need not be deposited into the transportation fund under the proposed constitutional amendment.

8. The previous version of this draft included a provision that required DNR to expend the fees it would receive from OHV registration in a manner such that one-third would be expended for OHV trails, one-third would be expended for law enforcement related to OHVs, and one-third would be expended for grants. I have removed that provision in this version of the draft because the restructuring of the appropriations as discussed above makes this provision, as drafted, unworkable. After you have had an opportunity to review the appropriations in the draft, I recommend that we meet to discuss this issue in more detail and to finalize the overall funding for the OHV program.

9. Please review s. 23.119, stats. That provision regulates the operation of OHVs on private property or public property that is closed to the operation of OHVs. That provision contains a different OHV definition from the OHV definition in this draft. It also contains language that overlaps with the language in this draft. These provisions will need to be harmonized. Do you want to amend the definition in s. 23.119 (1) (b), stats., so that it is consistent with the definition in this draft? Alternatively, you may wish to repeal s. 23.119, stats.

10. In the course of revising this draft, I realized that the draft requires all commercial OHV manufacturers, dealers, distributors, or renters to have a commercial OHV registration. Should this requirement be limited to Class B OHVs? Otherwise this requirement will apply to any commercial proprietor who sells, manufacturers, etc., a vehicle that technically meets the definition of an OHV even if the vehicle is not intended for use off of a highway.

11. I think that the definition of "off-highway vehicle" in proposed s. 23.37 (1) (f) may be too broad. Because the definition applies to almost any vehicle "capable of cross-country travel," other than an ATV, a UTV, a watercraft, or a motorcycle, the definition encompasses almost any vehicle. That is, shouldn't the definition be limited to vehicles that are designed to be used off of a highway or principally manufactured for off-highway use? Otherwise, the definition includes all four-wheel drive vehicles because any four-wheel drive vehicle is "capable of cross-country travel" on natural terrain without the benefit of a road or trail.

12. Do you want to amend s. 346.66 (1) (c) or 346.71 (1) or (2), stats., to include references to Class B OHVs?

Given the number of issues raised in this drafter's note, you may prefer to schedule a meeting to go through these items in more detail. I would be happy to meet with you if that is your preference.

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